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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,526	03/15/2000	Dietmar Przytulla	2511-092	9131

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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/525,526

Applicant(s)
Przytulla et al

Examiner
Joe Merek

Art Unit
3727



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 18, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

Art Unit: 3727

DETAILED ACTION

Claim Rejections - 35 U.S.C. § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8-9, 11-13, 15, 17, 22, and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wheaton (WO95/30585). Regarding claim 8, the limitation of blow-molded does not add any structure that is not found in the reference. Moreover, It has been well settled that the patentability of a product claim is not determined by the process by which it is made. See Fig. 4, where it is shown that the corners are rounded and the cross-section is square shaped. The container side walls are convex on the interior surface. Regarding claim 9, see Fig. 3 which shows the stiffening element which is the groove 20. Regarding claim 11, 19 is the thickened hoop. The limitation mold does not add any structure that is not in the reference. Regarding claim 12, the process limitations do not add any structure that is not in the reference. Regarding claim 13, the hoop sticks out from the body. Regarding claim 15, see Fig. 2, where the upper wall is shown and is connected to the four sides. Regarding claim 17, 16 is the foot hoop. Regarding claim 25, see Fig. 2 where 19 is the hoop which sticks out from the barrel body. The limitation mold does not add any structure that is not in the reference.

Art Unit: 3727

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8, 9, 11-18, 20-23, 25, and 26- are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper in view of Shaffer et al. Regarding claims 8 and 22, Roper does not teach that the container is made of plastic or blow molded. Shaffer et al teaches a drum that is made of plastic and blow-molded. It would have been obvious to employ the plastic and blow molding of Shaffer et al in the container of Roper to provide a container that will not corrode and method of producing the containers rapidly. The exterior of the drum is convex and the sides are substantially identically shaped. Regarding claims 16 and 18, the modified container of Roper does not teach the two side bungs. Shaffer et al teaches a drum with two bungs on the top wall that are opposite each other and adjacent the side wall. It would have been obvious to employ the bungs of Shaffer et al in the container Roper so that the container can be filled and emptied standing upright. Regarding claim 9, 29 is the stiffening element. Regarding claims 11 and 20, the modified container of Roper does not teach the thickened mold hoops. Shaffer et al as seen in Fig. 2, teaches thickened mold hoops in the side wall of the drum. It would have been obvious to employ the thickened hoops of Shaffer et al in the drum of Roper so that the container could be

Art Unit: 3727

rolled on its side or to provide a stronger side wall. Regarding claim 12, the process limitations do not add any structure that is not in the reference. Regarding claim 13, the hoop sticks out from the body. Regarding claims 14, 21, and 25, the hoops are at approximately 43% of the height of the body. Regarding claim 15, see Fig. 2, where the upper wall is shown and is connected to the four sides. Regarding claim 17, see Fig. 3, 79 is the foot hoop.

5. Claim 10, 19, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper in view of Shaffer et al as applied to claims 8, 18, 22 respectively above, and further in view of Young et al. Regarding claims 10, 19, and 24, the modified container of Roper does not teach the V-shaped stiffening element. (Roper teaches a U-shape). Young et al teaches a blow-molded container with a v-shaped stiffening element in the container side wall. It would have been obvious to employ the V-shape of Young et al in the container of Roper to provide for an alternative shape for the stiffening element.

6. Claims 8, 9, 11-13, 15-18, 20, 22, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 940872 in view of Roper '899. Regarding claims 8, 18, and 22, DE '872 does not teach the substantially identically shaped four sides giving an approximately square shape. Roper teaches a drum with four sides with substantially the same shape giving approximately square shape. It would have been obvious to employ the shape of Roper '899 in the container of DE '872 to provide an alternative shape for the container. Regarding claim 9, 60 is the stiffening element. Regarding claims 11, 20, and 25, 60 is a mold hoop. Regarding claim 12, the process limitation does not require any structure that is not in the reference. Regarding

Art Unit: 3727

claim 13, the mold hoop sticks out from the side of the body. Regarding claim 15, the upper wall is connected to the four sides. Regarding claims 16 and 23, see the two bungs as claimed.

Regarding claim 17, 42 is the approximately square shaped hoop.

7. Claim 10, 19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 9408722 in view of Roper '899 as applied to claims 9 and 22 above, and further in view of Young et al. Regarding claims 10, 19, and 24, the modified container of DE '722 does not teach the horizontal stiffening element that is v-shaped. Young et al teaches a rectangular container with a v-shaped horizontal stiffening element. It would have been obvious to employ the v-shaped element of Young et al in the modified container of DE '722 to provide a stronger side wall or to reinforce the side wall.

8. Claim 13, 21, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 9408722 in view of Roper '899 as applied to claims 14, 20, and 25 above, and further in view of Mikula et al. The modified container of DE '722 does not teach the thickened mold hoops at approximate the specified height. Mikula et al teaches reinforcing a side wall of a drum with thickened mold hoops at approximately 43% of the container height. It would have been obvious to employ the hoops of Mikula et al in the modified drum of DE '722 to provide a stronger side wall or to reinforce the side wall.

Art Unit: 3727

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses in Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

Art Unit: 3727

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe Merek whose telephone number is (703) 305-0644.

Joe Merek/jm

January 14, 2002


LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.